

(29,986)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 676

THE ST. LOUIS, KENNETT & SOUTHEASTERN RAILROAD
CO., APPELLANT,

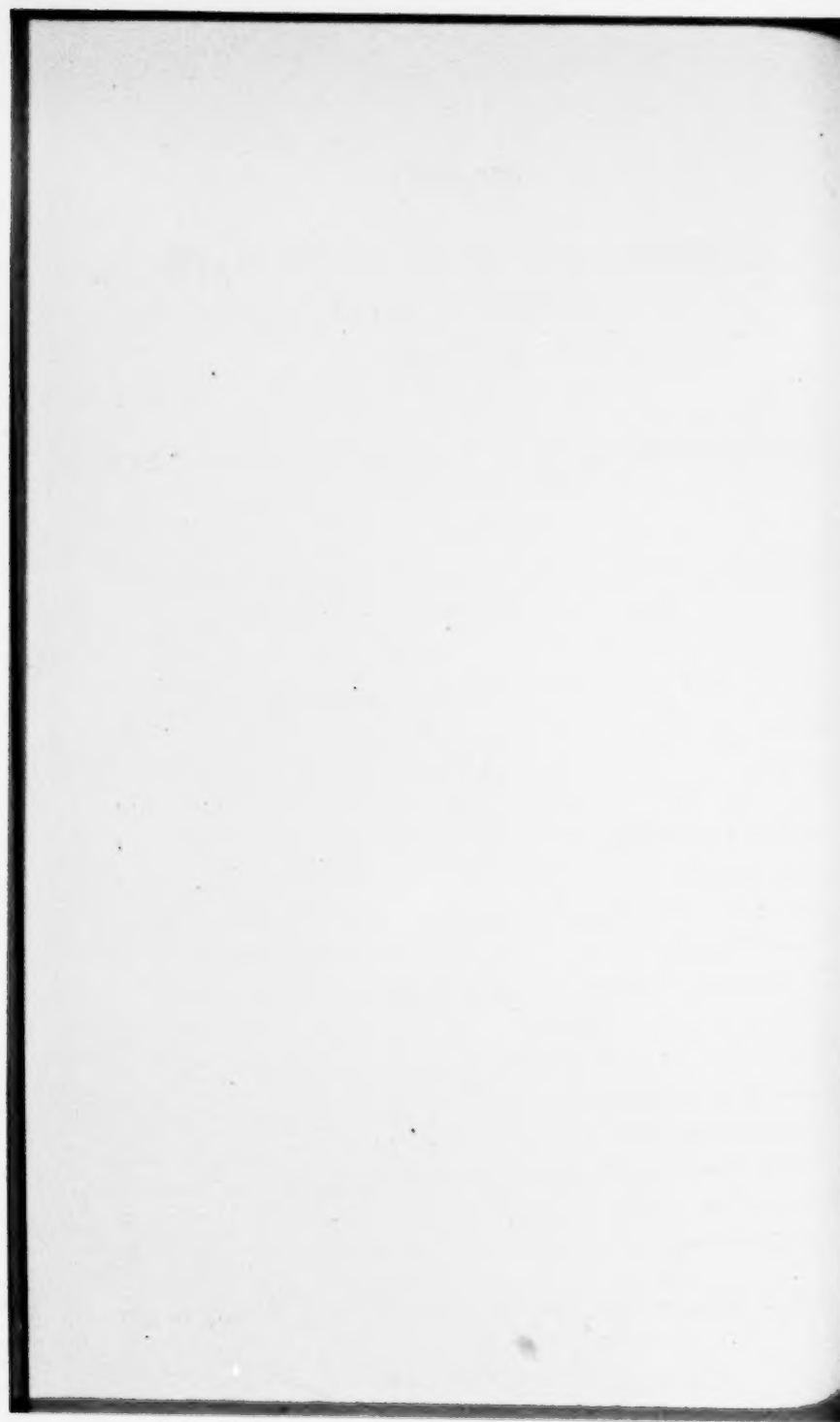
vs.

THE UNITED STATES OF AMERICA AND JAMES C. DAVIS,
DIRECTOR GENERAL OF RAILROADS

APPEAL FROM THE COURT OF CLAIMS

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. B—234

THE ST. LOUIS, KENNETT & SOUTHEASTERN RAILROAD CO.

VS.

THE UNITED STATES OF AMERICA and JAMES C. DAVIS, Director General of Railroads.**I. HISTORY OF PROCEEDINGS**

On October 11, 1922, the plaintiff filed its original petition.

On December 9, 1922, the defendant filed a demurrer to said petition.

On April 9, 1923, the demurrer was argued by Mr. Sidney F. Andrews, for the defendant, and by Mr. S. S. Ashbaugh, for the plaintiff.

On April 30, 1923, the court entered the following order and memorandum:

ORDER SUSTAINING DEMURRER

This cause coming on to be heard was submitted upon the demurrer to the petition and was argued by counsel. On consideration whereof the court is of opinion that the demurrer is well taken.

It is therefore adjudged and ordered that the defendant's demurrer be, and the same is hereby, sustained, and the petition is dismissed.

MEMORANDUM

The court's conclusion is based upon the considerations:

(1) That the jurisdiction of the Court of Claims in cases such as this is conferred by section 3 of the Federal control act, 40 Stat. 451. It provides for action by a board of referees and authorizes an agreement by the President with the carrier, and "failing such agreement" suit may be brought to determine the amount of just compensation. In the suit thus authorized the report of the referees is prima facie evidence of the amount of compensation and of the facts stated therein. The facts averred in the petition fail to show that the condition precedent contemplated by the statute has been complied with so as to bring the case within the jurisdiction of this court.

(2) That if the court have jurisdiction, the agreement, Exhibit A to the petition, concludes any rights the plaintiff might otherwise have.

[fol. 2] II. AMENDED PETITION—Filed June 15, 1923, by Leave of Court

Comes now the plaintiff, the St. Louis, Kennett & Southeastern Railroad Company, and for cause of action alleges:

1. That the St. Louis, Kennett & Southeastern Railroad Company is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and as such corporation has for a long time been and now is engaged in business as a common carrier of freight and passengers for hire both in the State of Missouri and as interstate commerce, and at all times hereinafter mentioned was [fol. 3] so engaged in intrastate and interstate commerce, with its office and principal place of business at Kennett, Missouri.

That said James C. Davis is now the duly appointed, qualified, and acting Director General of Railroads, and as such is made a party defendant herein.

2. That under the power granted by the act of Congress, approved August 29, 1916, the President of the United States, on December 26, 1917, issued his proclamation and thereby took possession and control of the railroads of the United States, including this plaintiff and all its transportation facilities and business, for the purpose of more effectually prosecuting the war with Germany, and immediately appointed a Director General of Railroads, who took possession and control of the plaintiff, its railroad facilities and business, and operated the same down to and including the 29th day of June, 1918. That the issuing of said proclamation, the taking possession and control of said railroads, and of this plaintiff, the appointment of said Director General of Railroads and his operation and control thereof were all approved by the act of Congress of March 21, 1918, known as the Federal Control Act.

That on the 29th day of June, 1918, the Director General of Railroads issued a relinquishment notice to the plaintiff in this case, whereby he pretended to relinquish the possession and control of this plaintiff, its railroad facilities and business, which said notice was received by this plaintiff on or about the 1st day of July, 1918, and whether said notice was valid or void in law the said plaintiff on said 1st day of July acted upon the same as legal and binding and thereafter and from and including said 1st day of July, 1918, the officers of said plaintiff operated the railroad of the plaintiff in accordance with the provisions of the Federal Control Act, and the further provisions of section 204 of the Transportation Act approved February 28, 1920.

3. That under and by virtue of the proclamation and order of the President so issued and made effective on January 1, 1918, this plaintiff and all its railroad facilities and business, its income receipts, expenses of operation and control, became and were under the direct orders of the Director General of Railroads, and all were so operated in accordance with the proclamation of the President and the several provisions of the law applicable thereto, and the defendants be-

came liable for the operation and control thereof, for the cost and maintenance of said operation, and for a just compensation therefor, during said period of operation and control from January 1 to July 1, 1918, as provided by the Federal Control Act; and that the plaintiff and the President of the United States were unable to agree upon the compensation to be paid the plaintiff for the use of its property, franchises and railroad facilities, and have since been unable to agree thereon, and have not at any time made any agreement touching the same.

That ever since the 1st day of March, 1920, when the period of Federal control ceased by operation of law, the Director General has refused to acknowledge and has denied his liability for the operation and control of the plaintiff's railroad, its facilities and business, during said six months from January 1 to July 1, 1918, and has refused to pay the costs and expenses of operation thereof, and to pay any compensation accruing to this plaintiff by virtue of the operation and control of its lines and business during said period of six [fol. 5] months, and still refuses to acknowledge his liability and to pay the costs of operation or any loss sustained thereby, and to pay this plaintiff any rental or compensation for the use, operation, and control of said railroad, its business and its property during said period so designated.

4. That, pretending to act under and by virtue of the Proclamation so issued by the President and by virtue of the provisions of the Federal Control Act and by virtue of his own authority, more completely to control the business theretofore conducted by said plaintiff and more completely to control and direct the business of this plaintiff and to transfer the same to other lines of railroad then under his control and operation, the Director General, by virtue of his power and influence over the business of the plaintiff operated in connection with lines of railroad then in his operation and control, advised and in effect forced and compelled this plaintiff to accept and sign a contract then known as a co-operative contract for short-line railroads, under date of February 19, 1919, a full, true, and correct copy of which contract (omitting signatures) is hereto attached, marked Exhibit A, and made a part hereof.

That said contract was arranged, drawn, and constructed entirely by the Director General, and contained such provisions as he demanded, and did not express a fair and equal agreement on the part of this plaintiff, but was accepted by its officers for the purpose of saving for themselves as much of their former business as possible, and as an alternative submitted by the Director General, and was signed for this purpose only, and not otherwise, and for the supposed concessions set out in sections 5 and 6 thereof, and for nothing else whatsoever.

[fol. 6] That by this contract the Director General pretended to say, and pretended to compel the plaintiff to accept as a fact, that this railroad was not taken under Federal control by the President's Proclamation, but was subjected to Federal control by virtue of the

Control Act of March 21, 1918, thus attempting to create a situation already created by law.

That by sections 5 and 6 of said contract the Director General pretended to agree and guarantee that the rates, fares, and charges in force on January 1, 1918, should remain in force as to the plaintiff's business, and that an equitable allotment of cars should be granted, and that the per diem rentals then in force should remain, or that they might be established from time to time as the Director General saw fit, and then provided that the only consideration therefor, or for any requirement inserted by the Director General in said contract, was the agreement found in sections 8 and 9 thereof that the plaintiff might, as far as practicable, have the right to use the purchasing agencies of the Director General in the purchase of materials and supplies at the prices which the Director General shall pay therefor, and that the plaintiff might have its repairs done at the shops of the connecting railroads then under the control and operation of the Director General and at fair prices fixed by him. No other or further consideration of any kind or nature whatsoever was included in said contract so drawn and required by the Director General, and no other further receipt or acknowledgment of any consideration whatsoever was included therein or was intended by either party thereto. The plaintiff gained nothing by the execution of this contract, and by it no rights were lost.

That by section 11 of said contract the Director General pretended [fol. 7] to rescind and set aside the notice of relinquishment issued on June 29, 1918, and to take the plaintiff and its properties again under control and operation of the Federal Control Act, and that the whole contract, so far as it was legal and valid, was pretended to be made effective as of April 1, 1918, although from and after July 1, 1918, the Director General never at any time exercised any control or operation over this company or its properties, but from and after July 1, 1918, the plaintiff was controlled and operated entirely by its own officers.

That the whole of said contract always was and now is wholly null and void for the reason that the same was prepared and executed by the Director General without any power or authority so to do, and is in many parts in direct violation of law then in full force and effect in attempting to create a relation already created by law and different than that provided therein; that no consideration was created therein or intended to be created therein for the use and benefit of the plaintiff; that no consideration was given or created in favor of the plaintiff even in sections 5, 6, and 9 thereof, as the same were then matters of law, or in section 8 thereof, where the right was controlled by the Director General, and that section 3 thereof does not contain and was not intended to contain any receipt or acknowledgment of any consideration by or in favor of the plaintiff for the use of said railroad property during said six months from January 1, to July 1, 1918, and refers only to the provisions of said sections 5, 6, 8 and 9 of said contract.

5. That during said period of six months from January 1, to July 1, 1918, because of the control and operation of said railroad and

its properties and because of the control and diversion of its traffic [fol. 8] and business by the Director General, the plaintiff sustained a loss or deficit in its operating income in not less than the sum of \$12,065, which the Director General has refused to pay or reimburse.

That during said period and because of said control and operation the plaintiff has sustained a further loss in the under maintenance of its equipment, and by reason of the failure of the Director General adequately to provide for the proper maintenance of the ways and structures of the said railroad company in the further sum of \$6,800, which has not been repaid.

That during said period the plaintiff suffered a further loss by reason of the Director General having failed and refused to furnish the necessary supplies and materials used in the operation of said railroad in the further sum of \$1,944, which has not been repaid.

That during said period the plaintiff was entitled to the fair rental value of said railroad and its equipment and assets so taken, controlled and used by the Director General, as a just compensation guaranteed by law, in the sum of \$46,800, no part of which has been paid.

That the several amounts above enumerated are justly due the plaintiff, and that due demand was made for the same on the President and the Director General; but that the President and the Director General, although often solicited so to do, failed to agree with the plaintiff upon the amount of reimbursement so claimed to be due, and failed to agree upon any amount whatsoever as just compensation because of the taking, control and operation of said property, as alleged, and refused and still refuses to pay any amount whatsoever for said losses, as above demanded.

[fol. 9] 6. That after the Director General had so refused to pay said claims or any part thereof, the plaintiff applied to the Interstate Commerce Commission for the appointment of a Board of Referees as provided by law, which application was granted, and a Board of Referees of three members was duly appointed, before whom this plaintiff duly presented its claim as above set forth. That said Board of Referees duly heard said claim, and on June 14, 1922, decided the same and rejected the demands of the plaintiff. A full, true, and correct copy of said decision as promulgated by said board is filed herewith as part of the files in this case, from which finding and decision the plaintiff now appeals to this court and asks that this appeal be heard and decided as provided by law.

That the plaintiff is the owner of said claim, and no assignment or transfer of said claim or any part thereof or interest therein has been made, and the plaintiff has at all times borne true allegiance to the Government of the United States.

Wherefore the plaintiff prays for a judgment in the sum of \$67,609, and for such other and further relief as is provided by law.

S. S. Ashbaugh, Attorney for Plaintiff. G. B. Webster, Of Counsel.

[fol. 10] Jurat showing the foregoing was duly sworn to by H. B. Pankey omitted in printing.

"EXHIBIT A" TO AMENDED PETITION

Agreement

This Agreement made this 26th day of February, 1919, between the Director General of Railroads (hereinafter called the Director General), acting on behalf of the United States and the President, under the powers conferred on him by the Proclamation of the President, hereinafter referred to, and the St. Louis, Kennett, and South-eastern Railroad Company, a corporation duly organized under the laws of the State of Missouri (hereinafter called the Company):

Witnesseth that

(a) Whereas by a Proclamation, dated December 26, 1917, the [fol. 11] President, acting under the powers conferred on him by the Constitution and Laws of the United States, by virtue of the joint resolutions of the Senate and House of Representatives, bearing the date April 6 and December 7, 1917, respectively, and particularly by virtue of Section 1 of the Act of Congress approved August 29, 1916, entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," took possession of and assumed control at 12 o'clock noon on December 28, 1917, for war purposes of certain railroads constituting a system or systems of transportation (not including the railroad of the Company described herein) and appointed William G. McAdoo Director General of Railroads; and

(b) Whereas the Act of Congress called herein the Federal Control Act, approved by the President March 21, 1918, brought under Federal control the railroad hereinafter described under the following provision, "That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within 'Federal control,' as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act;" and

(c) Whereas by Proclamation, dated March 29, 1918, the President, pursuant to the said Federal Control Act authorized the said William G. McAdoo, as Director General, either personally or through such divisions, agencies, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to make with the carriers or any of them, such agreements as may be necessary and expedient [fol. 12] respecting any matter concerning which it may be necessary or expedient to deal and to make any and all contracts, agreements or obligations necessary or expedient in connection with the Federal control of such railroads as fully in all respects as the President might do; and

(d) Whereas the said William G. McAdoo has resigned as Director General of Railroads, and by a Proclamation dated January 10, 1919,

the President appointed Walker D. Hines Director General of Railroads and authorized him, either personally or through such divisions, agencies, or persons as he may appoint, in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to make with the carriers, or any of them, the agreements, contracts, or obligations aforesaid:

Now, therefore, the parties hereto, each in consideration of the agreements of the other herein contained, do hereby covenant and agree to and with each other as follows:

Section 1. (a) This agreement shall be binding upon the United States, the Director General and his successors, and upon the Company, its successors and assigns, * * *.

This agreement shall not be construed as creating any right, claim, privilege, or benefit against either party hereto in favor of my State or any subdivision thereof, or of any individual or corporation other than the parties hereto.

(b) Wherever in this agreement the words Director General are used, they shall be understood as designating the person who has been, or may from time to time be appointed by the President to exercise the powers conferred on him by law with relation to Federal control.

Section 2. The Company's said railroad affected by this agreement shall be considered as including the following roads and properties:

The Railroad of the St. Louis, Kennett, and Southeastern Railroad [fol. 13] road Company, extending from Kennett, Missouri, to Piggott, Arkansas, a distance of twenty miles, more or less, with all branches and tracks, trackage, bridges, and terminal rights, all lines owned by or leased to and operated by the company and all other property of the company with the appurtenances thereof.

Section 3. (a) The Company accepts the terms and conditions of said Federal Control Act and the terms of this agreement, and expressly accepts the covenants and obligations of the Director General in this agreement set out and the rights arising thereunder in full adjustment, settlement, satisfaction, and discharge of any and all claims and rights at law or in equity, which it now has or hereafter can have against the United States, the President, the Director General or any agent or agency thereof by virtue of anything done or omitted, pursuant to the acts of Congress herein referred to.

This is not intended to affect any claim said Company may have against the United States for carrying the mails or for other services rendered not pertaining to or based upon the Federal Control Act.

(b) The Company, on its own initiative or upon the request of the Director General, shall take all appropriate and necessary corporate action to carry out the obligations assumed by it in this agreement or lawfully imposed upon it by or pursuant to the Federal Control Act.

Section 4. It is expressly agreed and understood that the possession and use of the railroad property herein described subject to the right of the Director General to take the said property into actual possession as hereinafter provided, as a war emergency shall remain in the Company, and the Company shall continue to operate the same, and

all revenues accruing from the operation thereof shall belong to the Company, and all expenses arising out of or incident thereto, and [fol. 14] all taxes of whatsoever character imposed thereon, or upon the Company shall be paid and borne by the Company, it being expressly agreed that unless and until the Director General shall as a war necessity take over the actual possession and operation of said railroad he assumes no obligation for the payment of any expenses or charges in connection therewith, nor of any risk or accident in connection with the operation or control of said property.

Section 5. All rates, fares, and charges for transportation services performed jointly by the Company and any transportation system in the possession of, and operated by, the Director General shall be divided fairly between the Director General and the Company. It is agreed that the arbitraries and percentages of joint rates, both passenger and freight, received by the Company as of January 1, 1918, shall not be reduced, and whenever joint rates have been or shall be increased, the Company shall receive as its proportion of such increased joint rates amounts in the same ratio as its arbitraries or percentages bore to the joint rates before they were increased.

Section 6. The Company shall receive an equitable allotment of the cars (and, where feasible, motive power) in the possession or under the control of the Director General. For the equipment thus furnished it shall pay the per diem rentals now in effect or as they may be established from time to time by the Director General, and like rentals shall be paid by the Director General to the Company for any of the Company's equipment used by him: Provided, however, That there shall be a time or reclaim allowance to roads of 100 miles or less in length of two days, which will be assumed by the delivering road.

Section 7. If differences arise as to any matter arising under this contract, either party may refer the question to the Interstate Commerce Commission, and its decision shall be final and binding.

[fol. 15] Section 8. The Company, so far as practicable, shall have the right to use the purchasing agencies of the Director General in the purchase of materials and supplies at the prices which the Director General shall pay therefor, and to have its repairs done in the shops of its connecting lines to the same extent and upon the same terms as were enjoyed before Federal control; where roads have heretofore not had the repairs done at the shops of the connecting line, but at private shops which have since been closed, they may have their repairs done at the shops of the connecting line upon fair terms.

Section 9. There shall be no discrimination against the Company in the matter of publishing tariffs and routing. In all publication of rates, tariffs, and routing, covering the territory in which the Company's road is situated, the Company shall be treated in the same manner as the trunk lines, except that nothing in this section shall be construed to require the establishment of joint rates where joint rates were not in effect at the commencement of Federal control.

Section 10. It is expressly agreed that if in the opinion of the Director General a necessity shall arise making it necessary or desirable for any purpose connected with the war, for the Director General to take into his own hands the possession, control, and operation of

said railroad and the properties herein described, he shall have the right to do so. In such event this contract shall be terminated and a new contract made providing for the payment of compensation as provided by the Federal Control Act; and if in the meantime it becomes necessary in his opinion to issue any orders or directions to said Company affecting the movement of troops or war supplies, said Company shall obey such orders or directions.

Section 11. In view of the foregoing covenants and agreements, and subject thereto, the order of relinquishment issued on the 29th [fol. 16] day of June, 1918, is hereby rescinded and set aside as of the date when the same was issued; and the said railroad and the properties herein described are hereby brought fully within the terms and under the control of said Federal Control Act, the same in all respects as if the said order of relinquishment had not been issued. This contract shall become and be effective as of April 1, 1918, with the same effect as if it had been executed and delivered on said date.

Section 12. The Director General will formulate definite rules and regulations governing exchange transportation, which rules and regulations shall be made applicable to the Company without discrimination.

Section 13. The Company shall furnish to the Railroad Administration a statement on forms supplied by the Director General, which shall show the total amount and character of competitive freight, in tons, which was handled by the Company during each of the seven months, April 1st to October 31st, inclusive, for the years 1915, 1916, 1917, and 1918, and the revenue thereon which accrued to the Company; also such detailed information as is possible to supply as to the freight traffic which it is claimed was diverted during the period April 1, 1918, to November 1, 1918, chargeable to the Director General's operation. If the analysis of this statement shows loss by diversion of competitive freight traffic and does not show any abnormal conditions as to the amount of freight traffic which are not fairly chargeable to the Director General's operation, the Company shall receive in cash the difference between the total revenue on competitive freight traffic for the seven months' period of 1918, and the average revenue for the seven corresponding months during the test period of 1915, 1916, and 1917, less the out-of-pocket cost to the Federal-controlled lines for transporting the diverted freight traffic, which shall be considered to be $33\frac{1}{3}$ per [fol. 17] cent of the gross revenue to the Company on such diverted freight traffic.

In the event the Company shall show that it has suffered from the diversion of competitive freight traffic between March 21, 1918, and April 1, 1918, it shall be reimbursed as provided herein.

For the purpose of this agreement, competitive freight traffic is defined as freight traffic moving over the particular short-line railroad involved, destined beyond its termini, or moving from, to, or between points on the Company's line of railroad, which could be handled at equal rates from point of origin to point of destination via the line or lines of some carrier or carriers, one or all of which are under Federal control.

Beginning on November 1, 1918, such arrangements shall be made for the routing over the Company's line of competitive traffic as shall insure to the Company in any month the same proportion of such competitive traffic as it had of the total of such traffic for the average of the three years, counting the calendar years of 1915, 1916, and 1917, taking into account both class and quantity of tonnage, it being understood and agreed that if in any month such proportion of competitive traffic delivered to the Company shall be less than that based on the average for the three-year period, the Director General will, within 60 days after the close of any such month, deliver such additional amount of competitive traffic as shall make up the required amount.

[fol. 18] III. DEMURRER TO AMENDED PETITION—Filed June 26, 1923

The United States of America and James C. Davis, Director General of Railroads, by the Attorney General of the United States, demurs to the amended petition filed herein upon the following grounds, to wit:

(1) Facts alleged in the amended petition do not constitute a cause of action within the jurisdiction of this court.

(2) Facts alleged in the amended petition do not show that the plaintiff is entitled to any relief as against the defendants or either of them.

(3) Facts alleged in the amended petition show a complete settlement and satisfaction of any and all claims plaintiff had or could have had against the United States or the Director General of Railroads under the Federal control act or on account of anything done or omitted to be done by the United States of America or the Director General of Railroads in respect to the matter set forth in plaintiff's amended petition.

(4) If, as alleged, the contract of settlement was executed by plaintiff under duress, or through fraud or mistake, plaintiff must first proceed in a court of equity to have same set aside before he can proceed in this court to have ascertained the compensation, if any, he is entitled to.

Robert H. Lovett, Assistant Attorney General. Dwight E. Rorer, Attorney. A. A. McLaughlin, General Solicitor R. R. Administration. Sidney F. Andrews, General Attorney R. R. Administration.

[fol. 19] IV. ARGUMENT AND SUBMISSION OF DEMURRER

On October 22, 1923, the demurrer to the amended petition was argued and submitted by Messrs. A. A. McLaughlin and S. F. Andrews, for the defendant, and by Mr. S. S. Ashbaugh, for the plaintiff.

V. ORDER SUSTAINING DEMURRER—Entered November 5, 1923

This cause coming on to be heard upon the defendant's demurrer to the plaintiff's petition as amended, and the court being of opinion that the plaintiff is not entitled to recover doth hereby sustain said demurrer, and the plaintiff's petition as amended is dismissed.

See Memorandum at the former hearing.

By the Court.

VI. JUDGMENT OF THE COURT—Entered Nov. 5, 1923

At a Court of Claims held in the City of Washington on the 5th day of November, A. D., 1923, judgment was ordered to be entered as follows:

This case was submitted upon defendant's demurrer to plaintiff's amended petition, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendant's said demurrer to the plaintiff's amended petition be sustained, and that the amended petition be and the same is hereby dismissed.

By the Court.

[fol. 20] VII. PLAINTIFF'S APPLICATION FOR APPEAL—Filed Nov. 12, 1923

Comes now the plaintiff above named on this 12th day of November, 1923, and makes application for and gives notice of an appeal to the Supreme Court of the United States from the judgment heretofore entered herein on November 5, 1923, sustaining the defendant's demurrer to the plaintiff's amended petition and dismissing said amended petition.

S. S. Ashbaugh, Attorney for Plaintiff.

VIII. ORDER OF COURT ALLOWING APPLICATION FOR APPEAL—
Entered November 19, 1923

It is ordered by the court that the plaintiff's application for appeal be and the same is allowed.

By the Court.

[fol. 21] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer to the amended petition; of the judgment of the court; of the plaintiff's application for appeal; of the order of the court allowing said application for appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this Twentieth day of November, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal of the Court of Claims.]

Endorsed on cover: File No. 29,986. Court of Claims. Term No. 676. The St. Louis, Kennett & Southeastern Railroad Co., appellant, vs. The United States of America and James C. Davis, Director General of Railroads. Filed December 3, 1923. File No. 29,986.

(1382)